



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 20 2014

OFFICE OF
WATER

Mr. John Hall
Hall & Associates
1101 15th Street, NW, Suite 203
Washington, D.C. 20005-5004

Re: Freedom of Information Act Request EPA-HQ-2014-000552

Dear Mr. Hall:

This is the final response to the above-referenced Freedom of Information Act (FOIA) request submitted to the U.S. Environmental Protection Agency (EPA) on October 25, 2013. On November 21, 2013, the EPA sent you a written request for an assurance of payment, pursuant to 40 C.F.R. § 2.107(e), to which you responded by modifying your request December 2, 2013, to provide only the following records:

1. Any legal or regulatory analysis or briefing materials prepared in support of the agency's decision to only apply the *Iowa League of Cities* decision in the 8th Circuit;
2. Any notifications given to the Regional offices from EPA Headquarters regarding the agency's aforementioned decision to only apply the Iowa League of Cities decision in the 8th Circuit; and
3. Any documents explaining how peak flow processing (also known as "blending") and bacteria mixing zones for CSO and stormwater discharges will be addressed in permitting and enforcement actions within the 8th Circuit versus outside of the 8th Circuit.

After this modification, the EPA updated its cost estimate for responding to your FOIA request and sought another written assurance of payment on December 11, 2013. On December 11, 2013, you further clarified that you limited the request to documents residing at or prepared by EPA Headquarters or used by EPA Headquarters to render its decision. Finally, the EPA sent you its final written request for an assurance of payment for \$1,073.25 on December 12, 2013. In addition, the EPA informed you that the Agency needed an extension of time to complete your FOIA request and would complete your FOIA request by January 31, 2014. Your office provided a written confirmation via email on December 16, 2013. Given this history, the EPA has been diligently responding to your FOIA request in good faith and did not miss this FOIA request's agreed deadline.

As promised, the EPA provided an initial production to your FOIA request in a December 24, 2013, letter. The December 24, 2013, letter included an itemized invoice for \$1,015.75, which is the cost of responding to the FOIA request. If you have not done so already, please forward your check or money order, made payable to the U.S. Environmental Protection Agency, within 30 days of the date of this response. Your check should refer to the FOIA number above and should be accompanied by the top portion of the enclosed Bill for Collection. Your prompt payment of the amount indicated will be appreciated.

Today's response does not include the release of additional responsive documents. We are unable to provide the documents listed in the attachment which have been determined to be exempt from mandatory disclosure by either the deliberative process or attorney-client privileges of 5 U.S.C. 552(b)(5) as pre-decisional, deliberative, and confidential or the investigatory records compiled for law enforcement purposes privilege of 5 U.S.C. 552(b)(7).

You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOI number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal." The appeal may include as much or as little related information as you wish, as long as it clearly identifies the determination being appealed (including the assigned FOIA request number - HQ-FOI-02026-10). Your appeal should also refer to the date of this determination and my name, title, and address.

Please contact me at (202) 564-1185 if you have any questions regarding our response.

Sincerely,



Deborah G. Nagle, Director
Water Permits Division

Attachment

Attachment

Documents withheld under FOIA Request EPA-HQ-2014-000552
January 27, 2014

1. Working draft of paper entitled "Iowa League of Cities," April 2, 2013, 1:51 pm. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
2. Working draft of paper entitled "Iowa League of Cities," April 2, 2013, 5:03 pm. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
3. Working draft of paper entitled "Iowa League of Cities," April 2, 2013, 5:49 pm.). This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
4. Working draft of paper entitled "Iowa League of Cities," April 3, 2013, 9:53 am. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
5. Working draft of paper entitled "Iowa League of Cities," April 3, 2013, 2:43 pm. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
6. Working draft of paper entitled "Iowa League of Cities," April 3, 2013, 3:45 pm. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.

7. Draft letter from Brenda Mallory, Acting General Counsel to Ignacia Moreno, Assistant Attorney General entitled "Re: EPA request to file a petition for rehearing en banc in Iowa League of Cities v. EPA (8th Cir. No. 11-3412)(March 25, 2013), April 11, 2013, 6:31 pm. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
8. Draft letter from Brenda Mallory, Acting General Counsel to Ignacia Moreno, Assistant Attorney General entitled "Re: EPA request to file a petition for rehearing en banc in Iowa League of Cities v. EPA (8th Cir. No. 11-3412)(March 25, 2013), April 11, 2013, 6:39 pm. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
9. Draft letter from Brenda Mallory, Acting General Counsel to Ignacia Moreno, Assistant Attorney General entitled "Re: EPA request to file a petition for rehearing en banc in Iowa League of Cities v. EPA (8th Cir. No. 11-3412)(March 25, 2013), April 12, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
10. Draft letter from Brenda Mallory, Acting General Counsel to Ignacia Moreno, Assistant Attorney General entitled "Re: EPA request to file a petition for rehearing en banc in Iowa League of Cities v. EPA (8th Cir. No. 11-3412)(March 25, 2013), April 16, 2013, 3:50 pm. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
11. Draft letter from Brenda Mallory, Acting General Counsel to Ignacia Moreno, Assistant Attorney General entitled "Re: EPA request to file a petition for rehearing en banc in Iowa League of Cities v. EPA (8th Cir. No. 11-3412)(March 25, 2013), April 16, 2013, 5:49 pm. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
12. Draft letter from Brenda Mallory, Acting General Counsel to Ignacia Moreno, Assistant Attorney General entitled "Re: EPA request to file a petition for rehearing en banc in Iowa

League of Cities v. EPA (8th Cir. No. 11-3412)(March 25, 2013), April 17, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.

13. Working draft of untitled document discussing 2 options regarding seeking *Certiorari*, August 7, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
14. Working draft of document titled "Issue: Should EPA recommend that DOJ petition the Supreme Court for writ of certiorari to overturn the Eighth's Circuit decision in *Iowa League of Cities*?" August 10, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
15. Working draft of document titled "Issue: Should EPA recommend that DOJ petition the Supreme Court for writ of certiorari to overturn the Eighth's Circuit decision in *Iowa League of Cities*?" August 12, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
16. Working draft of untitled paper addressing the issue of non-acquiescence, October 28, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
17. Working draft of paper "Iowa League of Cities: Next Steps" October 28, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
18. Working draft of paper "Iowa League of Cities: Next Steps" October 29, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C

552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.

19. Draft comments on draft letter from Bill Hinkel, Maine Department of Environmental Protection RE: Changes to CSO-Related Bypass Permit Conditions, July 17, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
20. Draft letter from Nancy K. Stoner to Senator Chuck Grassley, dated July 16, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
21. Draft letter from Nancy K. Stoner to Senator Chuck Grassley, dated June 25, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
22. Draft Response to the Petition of the Town of Concord, MA, dated October 28, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
23. Email from Brad Ammons to Loren Denton, subject "Iowa League of Cities ruling policy/potential impacts" dated April 11, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
24. Email from Richard Witt to Brenda Mallory, subject "RE: Iowa League letter" dated September 13, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.

25. Email from Steven Neugeboren to Brenda Mallory, subject "Meeting this week on Iowa League" dated October 21, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
26. Email from Richard Witt to Wendy Silver, subject "Iowa League of Cities" dated October 24, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice. ****
27. Email from Andrew Doyle to Richard Witt, subject "Iowa League – nonacquiescence issue" dated October 28, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
28. Email from Kevin Weiss to Connie Bosma, subject "SSO Peak Wet Weather Flows/Blending" dated August 1, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
29. Email from Sylvia Horwitz to Richard Witt, subject "RE: Action required Fw: CSO-Related Bypasses" dated July 30, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
30. Email from Joseph Theis to Leslie Humphrey, subject "Iowa League of Cities" dated September 5, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
31. Email from Kevin Weiss to Connie Bosma, subject "OGC Timing Issue" dated August 14, 2013. This document is withheld under the deliberative process and attorney-client

privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.

32. Email from Kevin Weiss to Sylvia Horwitz, subject "Rockland draft permit", dated August 27, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
33. Email from Kevin Weiss to David Webster, subject "Letter to CSO Related Bypass APR 2013" dated August 26, 2013. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative.
34. Email from Kevin Weiss to Glenn Curtis, subject "NFA materials" dated October 31, 2013. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative.
35. Email from Kevin Weiss to James Vinch, subject "briefing on Iowa League Decisions" dated September 25, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
36. Email from Kevin Weiss to Connie Bosma, subject "Iowa League v. EPA" dated October 22, 2013. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative.
37. Email from Kevin Weiss to Richard Witt, subject "Region 1 comments on ME CSO-related bypass letter", dated August 16, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
38. Email from Kevin Weiss to Mary Ellen Levine, subject "ME letter", dated October 31, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.

39. Email from Nancy Stoner to Travis Loop, subject "IA trip", dated August 9, 2013. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative.
40. Email from Steven Neugeboren to Avi Garbow, subject "John Hall (Center for Regulatory Reasonableness) presentation on 8th circuit decision. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
41. Email from Steven Neugeboren to Mary Ellen Levine, subject "Meeting on Iowa League is Wed Oct 30th at 9" dated October 21, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.
42. Email from Sushila Nanda to Christine Alvarez, subject "Wet Weather Conference call scheduled for Wednesday" dated October 2, 2013. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative.
43. Email from Sushila Nanda to Christine Alvarez, subject "Follow up 8/7/13 Wet Weather call re: Iowa League of Cities" dated September 5, 2013. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative.
44. Email from Sushila Nanda to Christine Alvarez, subject "Wet Weather Conference call scheduled for Wednesday" dated August 7, 2013. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative.
45. Email from Mary Ellen Levine to Samir Bukhari, subject "Draft Response to Concord Petition", dated October 28, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.

46. Meeting invitation entitled "Regional NPDES Program Managers' Call" dated August 15, 2013. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative.
47. Email from Karen Metchis to Brent Larsen, subject "Final Agenda: Sept 19 NPDES Branch Chief Call" dated September 19, 2014. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative.
48. NPDES Program Managers' Conference Call September 19, 2013 minutes. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative.
49. Meeting invitation entitled "Iowa League of Cities" dated October 28, 2013. This document is withheld under the deliberative process and attorney-client privileges of 5 U.S.C 552 (b)(5). The internal document was predecisional and deliberative. In addition, the document is also confidential communication between a client and their attorney relating to a legal matter for which the client has sought professional advice.